IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 11TH OCTOBER 2007 / 19TH ASWINA 1929

Crl.MC.No. 3141 of 2007()

CRA.347/2005 of ADDITIONAL DISTRICT AND SESSIONS JUDGE(ADHOC-III) KOLLAM

CC.1250/2003 of JUDL.MAGISTRATE OF FIRST CLASS-II, KOTTARAKKARA

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PETITIONER: ACCUSED

SHAHUL HAMEED, S/O.ABDUL RAHMAN KUNJU,
ADIKATTUVADAKKETHIL, VADAKKUMTHALA,
KARUNAGAPPALLY, KOLLAM DISTRICT.

BY ADV. SRI.B.MOHANLAL

RESPONDENTS: COMPLAINANT

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1. CHANDRAN PILLAI,
CHARUVILA PUTHENVEEDU, KARINGANOOR P.O.,
VELINELLOOR VILLAGE, KOTTARAKKARA, KOLLAM DIST.

2. STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 11/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No. 3141 of 2007

Dated this the 11th day of October, 2007

O R D E R

The petitioner has been found guilty, convicted and sentenced in a prosecution under Section 138 of the Negotiable Instruments Act. The said verdict of guilty, conviction and sentence have now become final with the decision of this Court dated 2.3.2007 in Crl.R.P.960 of 2007. The petitioner now faces the sentence of imprisonment till rising of court. There is a further direction to pay an amount of Rs.50,000/- as compensation to the complainant and in default to undergo S.I for a period of one month.

2. According to the petitioner, subsequent to the revision, the defacto complainant and the petitioner have settled their disputes. The defacto complainant has compounded the offence. The entire amount of compensation has already been paid to the defacto complainant. In these circumstances, it is prayed that invoking the dictum in **Sabu George v. Home Secretary** [2007(1) K.L.T 982], the verdict of guilty, conviction and sentence under Section 138 of the Negotiable Instruments Act may be set aside.

3. **Sabu George v. Home Secretary** is not at all an authority for the proposition that all compositions at the post revision stage

can be accepted by the court to set aside the conviction and sentence. In **Sabu George v. Home Secretary**, in spite of the composition, the accused person who was found guilty under Section 138 of the Negotiable Instruments Act was faced with the prospect of a substantive sentence of imprisonment for a long period in prison. That, this Court felt, would be the failure and miscarriage of justice. Hence it was directed that in such circumstances, composition can be accepted to relieve the indictee of the obligation to spend time in prison to serve a substantive sentence of imprisonment. This and this alone was held in **Sabu George v. Home Secretary** . **Sabu George v. Home Secretary** cannot at all be reckoned as authority for the proposition that in every case of composition even at the post revision stage, the matter can be compounded and this Court should accept all such composition.

4. Coming back to the facts of the case, the petitioner faces only a sentence of imprisonment till rising of court. To avoid that sentence, I am certainly not persuaded to invoke the jurisdiction under Section 482 Cr.P.C. Of course, there is a direction to pay an amount of Rs.50,000/- as compensation. The petitioner asserts and the complainant has subscribed to a joint statement in which it is stated that the entire amount has been paid. If that be so, there can be no

question of execution of any default sentence. The direction was only `to pay' and not `to deposit'. Admittedly payment has been made. Following the dictum in **Girish v. Muthoot Capital Service (P) Ltd.** [2007(1) KLT 16)], the default sentence cannot be executed if the court is satisfied that such payment has been made. To avoid the default sentence also, I am satisfied that the powers under Section 482 Cr.P.C need not be invoked.

5. This Crl.M.C is, in these circumstances, dismissed. The petitioner along with the complainant can appear before the learned Magistrate and satisfy the learned Magistrate that the compensation amount has been paid and discharged, whereupon there shall be no question of executing the default sentence. The petitioner will have to undergo the substantive sentence of imprisonment till rising of court only.

(R.BASANT, JUDGE)

rtr/-